

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 120 OF 2002

IN

NOTICE OF MOTION NO. 2737 OF 2002

IN

TESTAMENTARY PETITION NO. 696 OF 2002

Nitin Hiralal Parikh ... Petitioner

Vs.

Chandrakant Hiralal Parikh & Ors. Respondents

Mr. Shailesh Shah with Ruchi Tolat i/b. L.C. Tolat &
Co. for the Petitioner.

Ms. Valani i/b. B.M.Jadhav for Respondent No.1.

CORAM: S.K.SHAH, J.

DATE : 14th July, 2006.

P.C.

1. The contempt is alleged of the order passed by
the Court on 11.10.2002. The order reads as under :-

" Respondent No.2, though served, absent. It
appears that the Petitioner is in possession of

the flat in question. On behalf of Respondent No.1 also, it is stated that he is in possession of the said flat as it is contended on his behalf that flat at D-403, Poonam Apartments, Dr. A.R.Road, Worli, Mumbai 400 018 has been given on lease. If Respondent NO.1 is not in possession of the flat, by this order the Respondent No.1 is restrained from inducting himself in the said flat. Right of the Petitioner as regards his use and occupation in respect of the suit flat will not be disturbed by the Respondents except by following due process of law and Respondent No.1 will not create any third party rights or induct any third person in the premises in question."

2 By order dated 22.11.202, the Petition was admitted. By Order dated 3.9.2004, this Court made observation "Prima-facie, the Petitioner appears to be correct in contending that the Respondents and especially Respondent No.1 is guilty of contempt of the order dated 11th October, 2002." In view of this, show cause notice was issued. The parties were allowed to lead evidence.

3. By order dated 11.10.2002, a conditional order of injunction was passed mentioning that if the Respondent No.1 is not in possession of the flat, he

will be restrained from inducting himself in the said flat. Therefore, enquiry into whether the Respondent NO.1 was in possession or not was required to be made in order to find out whether contempt was committed. Even during the enquiry, parties have produced evidence which disputes the very fact that Respondent No.1 was in possession of the portion of the suit premises. To my mind, if there is such dispute, there can be no contempt of the order of the Court.

4. It is further to be noted that the suit flat was of the deceased father, who expired leaving a Will bequeathing the suit premises in favour of the Petitioner. Therefore, this is a dispute between the brothers.

5. At any rate, in view of what is stated above, no contempt action can be taken.

6. As such, the Contempt Petition is disposed of. The Show Cause Notice stands discharged.

7. The learned Counsel for the Petitioner at this stage points out that this Court in the order dated 31.10.2002 in Contempt Petition made observation that only Respondent No.1, his wife, son and unmarried daughter are permitted to reside in the flat in one

room which was earlier occupied by the deceased father. The order further observed that the daughter of Respondent No.1 and her husband shall be entitled only to visit Respondent no.1 in the said flat. Rest of the Respondents and the Contemnors are restrained by an injunction from entering upon the suit flat in any manner.

8. In view of this, the learned Counsel for the Petitioner states that this order shall be continued.

9. At this stage, the learned Counsel for Respondent No.1, on taking instructions from the Respondent No.1, who is present in person, states that the order passed would be followed and no person other than those referred in the order would be allowed to reside in the said flat.

(S.K.SHAH, J.)